

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF SOUTH CAROLINA
ORANGEBURG DIVISION

Rodney Parker,

PLAINTIFF

v.

Bryan P. Stirling, et al.,

DEFENDANTS

Case No. 5:19-cv-00938-TLW

Order

Plaintiff Rodney Parker, a South Carolina Department of Corrections (SCDC) inmate proceeding *pro se*, filed this civil action alleging various causes of action against ten named defendants and twenty-two Jane or John Doe defendants. ECF No. 1. After the named defendants were served, they filed a joint motion to dismiss, alleging generally that the Complaint failed to comply with Rule 8. ECF No. 44. The magistrate judge issued a *Roseboro* order, informing Parker that his response to the motion to dismiss was due by August 19, 2019. ECF No. 45. He failed to respond by that date, but he had recently been transferred to a different institution, so the magistrate judge issued another order informing him that he had until October 4, 2019 to file a response or his case would be recommended for dismissal for failure to prosecute pursuant to Rule 41(b). ECF No. 48. On October 4, 2019, he filed a motion for an extension of time to respond, which the magistrate judge granted, giving him until November 7, 2019 to file his response to the motion to dismiss. ECF Nos. 51, 52. He failed to respond by that date, so on November 15, 2019, the magistrate judge issued a Report and Recommendation (Report) recommending that his case be

dismissed for failure to prosecute pursuant to Rule 41(b) and giving him until December 2, 2019 to file objections to the Report. ECF No. 54. On November 21, 2019, he responded to the motion to dismiss. ECF No. 57. He then submitted a timely objection to the Report on December 2, 2019. ECF No. 58. This Court issued an Order ruling on the Report and finding that Plaintiff's response to Defendant's Motion to Dismiss should be construed as an Amended Complaint. ECF No. 69. The undersigned then remanded the case back to the magistrate judge for further proceedings in light of the Amended Complaint.

The Defendants have now responded to the Amended Complaint by filings Motions to Dismiss. There are four pending Motions to Dismiss, all of which test the sufficiency of the pleadings. ECF Nos. 126, 127, 136, and 165. The matter now comes before the Court for review of the Report, following this Court's remand of the case, filed by the magistrate judge to whom this case was assigned. ECF No. 189. In the Report, the magistrate judge recommends that Defendant Stirling's Motion to Dismiss be granted (as the Amended Complaint states no specific allegations against him), and that all other Motions to Dismiss be denied. Parker filed objections to the Report, ECF No. 192, and Defendant Stirling replied, ECF No. 193. No other Defendants objected, responded, or replied to the Report. This matter is now ripe for decision.

In reviewing the Report, the Court applies the following standard:

The magistrate judge makes only a recommendation to the Court, to which any party may file written objections The Court is not bound by the recommendation of the magistrate judge but, instead, retains responsibility for the final determination. The Court is required to make

a *de novo* determination of those portions of the report or specified findings or recommendation as to which an objection is made. However, the Court is not required to review, under a *de novo* or any other standard, the factual or legal conclusions of the magistrate judge as to those portions of the report and recommendation to which no objections are addressed. While the level of scrutiny entailed by the Court's review of the Report thus depends on whether or not objections have been filed, in either case the Court is free, after review, to accept, reject, or modify any of the magistrate judge's findings or recommendations.

Wallace v. Hous. Auth. of City of Columbia, 791 F. Supp. 137, 138 (D.S.C. 1992) (citations omitted).

In light of the standard set forth in *Wallace*, the Court has reviewed, *de novo*, the Report and the objections. After careful review of the Report and the objections, for the reasons stated by the magistrate judge, the Report is **ACCEPTED**. Defendant Stirling's Motion to Dismiss, ECF No. 126, is **GRANTED**, and he is dismissed as a party to this action. All other Motions to Dismiss, ECF Nos. 127, 136 and 165, are **DENIED**.

IT IS SO ORDERED.

s/ Terry L. Wooten
Terry L. Wooten
Senior United States District Judge

February 12, 2021
Columbia, South Carolina